Revenue **(1940) Department.**

MS **SERIES.**

G.O. No. 3111

Dated 23-12-1940

[Despatch Abstract.]

Assessment - (South Kanara) - Mangalore Taluk - Kodialbial village - Muli No.18/1 - Increment Remission Register - Correction - Refused.

2284 E/40. Department.

List of records put up.

Number.	Date.	Department.	Signature of Clerk putting up the paper.	Signature of Clerk removing the paper
Enclos Secretary Minn			RAJ Wallace	
Ent 2145 E240-1917 X 40				
Gro 900 Alw 91440				
Qu 2970 Alw 9				
Kanara Stock Ltd				
FM 17251-2B, LA-91440				
Rt 90 29				
Rt 2562 91 25540				

4 OCT 1940

To

The Government of Madras,

(Revenue Department)

Fort St. George,

M a d r a s.

The Humble Memorial of L. Bhavani-Shanker Rao, Retired Assistant Inspector of Customs, residing at Kadri Mangalore Town, South Kanara District.

Respectfully sheweth as follows:-

That the petitioner is the present registered holder of the lands which were formerly comprised in Puli No. 18-1, known as Puttamari Sheshaya Marg in Kodialboil Village of Mangalore Taluk in South Kanara District.

2. That the said lands were purchased by L. Dasappayya, the petitioner's ancestor from one Sithamma under registered sale deeds executed by her on 18- 8- 1868, and 17- 2- 1870. After the death of the said L. Dasappayya, the petitioner's elder brother, L. Venkat Rao, as the manager of the undivided Hindu family came into possession of the said properties. He paid the balance purchase money due to Sithamma aforesaid, and obtained from her a registered receipt dated

22- 5- 1876. The lands pertaining to the said Muli Warg No. 18 - 1, are small plots and were granted on mulgeni (permanent lease) to various persons by my ancestor's predecessors, long before the Settlement of 1902, and some after it. Some of the mulgeni chits or permanent leases have been registered, while others are not registered as they relate to a period long before the practice of registration was introduced. The rents fixed then are permanent and unalterabl

3. All the aforesaid registered and unregistered mulgeni leases as well as the registered sale deed of the property, definitely state, that the old assessment of the lands comprised in Muli Warg No. 18 - 1, was Rs. 12- 7- 5 including cess. This figure is also borne out by the assessment receipts granted by the Potails till the settlement in respect of Muli No. 18 - 1 of Kodialbail. The enclosed Potail's receipt Books A and B show that assessment for Warg No. 18 i.e. (18 - 1), and 34 during the pre-settlement years was in the neighbourhood of Rs. 14/-. This is due to the fact, that in pre-settlement years, the Potail of Kodialboil was collecting assessment not only of Muli No. 18 - 1, but also Muli No. 34 (a small house and garden belonging to the petitioner in Kasba Bazar, Mangalore,) as Kasba Bazar and Kodialboil are contiguous, but to distinguish the

two items, he has clearly stated in the receipt for the year 1899, that the assessment for Muli No. 18 - 1 is Rs. 12- 4- 9, and Muli No. 34 is Re. 1- 9- 4. Please vide, receipts Books B page 3 (lower portion). The amounts collected as assessment differs slightly every year and it differs even now. Besides, Muli No. 18 - 1 and 34 the receipt books show pre-settlement assessment paid on Muli No. 7, which is another property belonging to petitioner in Booloor Village.

4. The aforesaid figure of Rs. 12- 7- 5, shown as assessment, included also the cesses payable in respect of the said lands. Besides this, The Bharti Cumbharti Register for Fasli 1311, prepared by the Revenue Department prior to the settlement operations in South Kanara for the purpose of land revenue collection, shows that the assessment on Muli Warg No. 18 - 1, was Rs. 11- 13- 5 plus Re. 0- 8- 10 for village cess, total Rs. 12- 6- 3, Please vide Column (22) of certified extract submitted herewith. The authanticity of this Government record which existed before the settlements, and which showed correctly the old assessment, cannot now be disputed. It is the only Government record that now exists showing the correct old assessment that was collected in pre-settlement years on different holdings.

5. Nevertheless in the Increment Register prepared at the settlement, the pre-settlement assessment on the lands comprised in Muli Warg No. 18 - 1 has been shown as Rs. 30- 9- 0. In the face of the recitals in the registered documents and the figures given in the assessment receipts and Bharti Cumbharti Register of the Revenue Department referred to above, the figures of Rs. 30- 9- 0 given in the Increment Register is evidently incorrect. The petitioner is unable to explain how this mistake occurred at the settlement. He can only surmise that the figure adopted was apparently the total pre-settlement assessment on Warg Nos. 18 - 1, and 18 - 2 and 18 - 3 shown in the Bharti Cumbharti Register, and was so adopted because the assessment on the lands in Muli No. 18 - 1 was enhanced heavily from Rs. 12- 7- 5 to Rs. 101- 5- 0. Although protests against this abnormal increase were filed before the Revision Officers by the Petitioner's predecessors, they were completely ignored.

6. Petitioner submits that, as a result of the aforesaid mistake in the Increment Register, he has suffered great injustice and loss. The lands comprised in the said holding were granted on mulgeni (perpetual lease) to tenants on a small yearly rental, which was fixed in the years prior to the settlement with reference to the

proportionate assessment on the holdings on the basis of the pre-settlement assessment of Rs. 12- 7- 5 actually levied from the petitioner's predecessor-in-title, L. Venkat Rao and there were no conditions in the leases to meet the increased assessment. As a result of the enhancement of the assessment at the time of the settlement, the petitioner's family lost heavily; and now even after the passing of the Mulgeni Rent Enhancement Act 1920 (Madras Act No. XIII of 1920), the petitioner is deprived of the just benefit legally due to him as a result of the aforesaid mistake in the Increment Register. Under the said Act, the rent is enhanced on the basis of the figures mentioned in the Increment Register, and under the proviso to Section 8 of the said Act, the figures given in the Increment Register are conclusive for purposes of determining the enhancement in rent.

The petitioner, therefore, petitioned the Collector of South Kanara, setting forth the above facts, and praying that the mistake in the Increment Register may be corrected by showing the correct figure of Rs. 12/- and odd as the pre-settlement assessment, and apportioning the same amongst the several holdings, and the Collector in his office L. Dis. 7229-38 dated 16- 1- 1939, rejected the application on the ground that it was not possible to revise orders

passed at settlement, after considerable lapse of time: Thereupon the petitioner appealed to the Board of Revenue against the order of the Collector, and the Honourable Board of Revenue in B. P. Roucine No. 2562 dated 25- 5- 1940 dismissed the appeal, and has directed that the petitioner may, if so, advised, seek to establish his contention by taking proceedings under Section 9 of the Mulgeni Rent Enhancement Act, 1920, which does not apply to his case.

8. Petitioner submits that, both the Collector and the Board of Revenue have entirely ignored the recitals in the records referred to above, whose genuineness and authenticity cannot be disputed. The petitioner cannot believe that the figure of Rs. 30- 9- 0 shown against the pre-settlement assessment in the Increment Register, can be supported and corroborated by any other records or documents, in the possession of the Revenue Authorities in the face of the extract from the Bharti and Cumbharti Register of the Revenue Department, the Potail's receipts and entries in the registered documents, and he submits that the refusal of the Revenue Authorities to rectify the mistake is due more to an aversion to amend the records on the ground of lapse of time, than otherwise to any independant or reliable testimony in support of the ~~said records~~ figure shown in the Increment Register..

The petitioner submits, that there was no transfer of holdings belonging to petitioner from other wargs to this warg, or vice versa, at the time of settlement, and that at the time of enquiry into the petition to the Collector, the Potail of Kodialbail who actually collected the assessments on Muli No. 18 - 1, before the settlement, and who was summoned to appear before the Tahsildar, Mangalore, deposed that the assessment collected in respect of properties in Muli No. 18 - 1 was Rs. 12/- and odd and not Rs. 30/- or more, as shown in the Increment Register The result of the enquiry must have been reported to the Board by the Collector, and if Government were pleased to call for the Collector's report, the fact that the old assessment was Rs. 12/- and odd would become evident.

10. Petitioner submits, that the scope of his application has been entirely misunderstood by the Revenue Authorities. He does not dispute the assessment imposed on the holdings at the time of the settlement, nor does he want to get a refund of assessment (already paid) from Government. His sole grievance is, that, on account of the mistake in the Increment Register, he is deprived of his legitimate and just dues recoverable from his tenants. The Board of Revenue seems to think that the petitioner can possibly get the necessary relief under Section 9 of the Mulgeni Rent Enhancement Act, 1920;

but the petitioner submits that so long as the incorrect figures mentioned in the Increment Register stand, as they are, relief appears to be impossible. Section 9 of the Mulgeni Rent Enhancement Act, does not cover the point raised by the petitioner, as it empowers a Collector to enhance or reduce apportionment of rent made under Section 6, at the time of revision of assessment and that under Section (8) sub clause, it is stated that, where an apportionment of old assessment has been made by the Settlement Officer as in this case, such apportionment shall be accepted by the Collector. As the petitioner's tenants know that these incorrect entries in the Increment Register are favourable to them, they refuse to accept apportionment as per records of the property, both Government and registered sale deeds.

11. Petitioner further submits that he or his predecessors-in-title, could have no knowledge of the aforesaid mistake in the Increment Register till extracts thereof became available for purpose of the Mulgeni Rent Enhancement Act, and that no adverse inference could possibly be drawn against him from the fact, that no steps had been taken to rectify the mistake from the time of the settlement

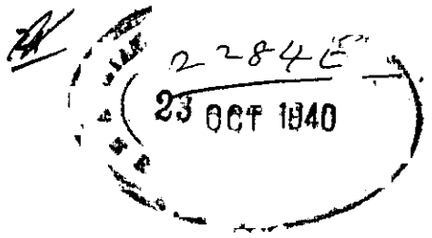
mulgeni leases showing the correct old assessment, if called for.

13. Petitioner, therefore, prays that the Government may in furtherance of ends of justice, equity and good conscience, be pleased to direct the rectification of the aforesaid mistake in the Increment Register.

) The Enclosures may be returned. Shanker Rao

Kadri Road,
Mangalore,
South Kanara District,
Dated 26-September 1940

PETITIONER.



(L) Government Endorsement No 2145 E-1 Dated 7-10-1940 assessment Land Revenue Mulgini (South Kanara) Mangalore Taluk Hodialbail village. My petition Dated 26-9-1940.

Copy of my petition dated 26-10-38, to the Collector of South Kanara and of his order I. Dis 7229/38 Dated 16-1-39, and all copy of the appeal to the Board of Revenue dated 31-3-39, and Board's Proceedings Routine 2562 Dated 25-5-1940, dismissing the appeal are submitted herewith for favour of reference

2. The original of the Collector's order dated 16-1-39 was submitted to the Board along with the appeal and is at present in the Board's office.

3. The Board's Proceedings referred to above is submitted in original

4. The Enclosures may be kindly returned when done with

Kadri Road
Mangalore 26-10-1940

Yours obediently Shanker Rao.
Memorialist.

(address) Asst Director of Customs (Ltd)

The Collector of South Kanara,

Mangalore.

S i r,

I beg to bring to your kind notice that there has been a serious mistake in the distribution of revenue assessment of pre-settlement period (1902), in the Increment Register of the Taluk Office, as regards the several patta lands of Muli No. 18- 1 known as Puttamari Sheshaya Warg in Kodialboil Village of Mangalore Taluk In fact, the revenue assessment of pre-settlement period in respect of three properties Muli No. 18- 1, 18- 2, and 18- 3, viz. Rs. 30/- and odd excluding village cess, has been foisted upon Muli No. 18- 1, standing in the name of my late brother Mr. L.Venkat Rao, and at present in my name, as a member of the undivided family, and this amount of Rs. 30/- and odd, has been shown as Revenue assessment of pre-settlement period (1902), in the Taluk Increment Register on the several plots of Muli No. 18- 1, whereas, its correct Revenue assessment of pre-settlement period is Rs. 12/- and odd, which is proved by the certified extract of 'Barthi Cambarthi' account of the village for fasli 1311, granted by the Tahsildar, Mangalore, and also the Potails receipts granted by the village Potail, for assessment paid by us during the pre-settlement years on the several plots of Muli No. 18- 1.

2. The original registered sale deed of the property viz. Muli No. 18- 1, and also, the several registered mulgeni leases granted by my predecessors, clearly show

that the revenue assessment of this property is Rs. 12- 7- 5, which tallies with the assessment as shown in the 'Barthi Cambarthi extract granted by the Tahsildar, and I am prepared to produce all the documents referred to above at the time of enquiry.

3. This wrong allotment viz. Rs. 30/- and odd, in the Taluk Increment Register as revenue assessment of pre-settlement period, against Rs. 12/-, and odd on Muli No. 18 - 1 alone, has put me to serious losses year by year. The plots of Muli No. 18- 1 are all granted by us on mulgeni, and the Revenue Divisional Officer bases his decision on the wrong figures as given in the Increment Register, when deciding cases filed by me under the Mulgeni Rent Enhancement Act of 1920, and the deductions made are much higher than what is actually due.

4, The survey and settlement register (Adangil) of the village, shows Muli No. 18- 1, 18- 2, and 18-3, are different properties having separate pattas in the name of three different persons, viz. (1) L. Venkat Rao, (2) Anusuya Bai, and (3) German Mission Agent, and Patt Nos. 209, 210 atc. relate to Muli No. 18- 1, Patta Nos. 145, 157 etc. to Muli No. 18- 2, and Patta No. 239, to Muli No. 18- 3, while the true copy of the Barthi and Cambarthi accounts of Fasli 1311, granted by the Tahsildar, clearly shows the Revenue Assessment of these thre properties at the time amounted to Rs. 30/- and odd, and it is beyond comprehension, why this total assessment should have been shown as revenue assessment

against the holdings of Muli No. 18- 1 alone. It is evidently a clerical error.

5. I, therefore, beg, that entries in the Increment Register of the Taluk, so far as relate to this wrong figure, may be corrected with reference to the pattas of Muli No. 18- 1, showing the amount of Revenue Assessment Rs. 12- 6- 3 including village cess, as shown in the Revenue Accounts of the period, and also, corroborated by the Potails receipts, and registered sale and lease deeds, in which case a proportionate distribution may be made in respect of the several pattas of Muli No. 18- 1.

I beg to remain,

Sir,

Your most obedient servant,

Mangalore,
D/- 26-10-1938

(Sd) L.Bhavani Shanker Rao.

/True Copy/-

L. Bhavani Shanker Rao

18-10-1940.

Memorialist

Proceedings of the Collector of South Kanara dated 16- 1- 1939.

Shri Diwan Bahadur M.V.Vellodi, B.A.

Assessment - Mangalore Taluk - Kodialboil Village. Revenue assessment - mistake in the Settlement Increment Remission accounts - rectification - orders passed.

Ref.(1) Petition dated 26- 10- 1938 from Shri L. Bhavani Shanker Rao, Retired Assistant Inspector of Customs, Mangalore, (2) Mangalore Tahsildar's L. Dis. 11036-38 dated 4- 12- 1938 received with Mangalore Revenue Divisional Officer's L. Dis. 6327-38 dated 23- 12- 1938.

It is not possible to revise the orders passed at settlement at this distance of time. The petitioner is informed that the Collector is unable to grant his request.

(By Order)

Sd/- M.Bhavani Shanker Rao,
18-1-39.
Huzur Head Clerk.

The Petitioner through the Tahsildar,
Mangalore.

/True Copy/-

M. Bhavani Shanker Rao
18-10-1940.
Memorialist

From

Sri L.Bhavani Shanker Rao,

Assistant Inspector of Customs (Retd),

Kadri Road, Mangalore,

South Kanara District.

To

The Hon'ble Board of Revenue (Land Revenue)

Chepauk, Madras.

Sirs,

I beg to appeal against the order of the Collector of South Kanara, in L. Dis. 7229/38 dated 16- 1- 1939, received by me on 6- 3- 1939 - Exhibit A., and herein enclosed, in which, he declines to correct the mistakes made by the then Departmental Officers, in the Increment Register of Mangalore Taluk, as regards the pre-settlement assessment of warg land (in Puttamari Shashaya Warg) Muli No. 18-1 of Kodialboil Village of Mangalore Taluk, South Kanara District. The pre-settlement assessment of Warg Muli No. 18- 1 was Rs. 12/- and odd, and this assessment was increased to Rs. 101/- and odd in 1902, during the time of settlement. As the proportion of increase was very high viz. 1 : 8, objections were put in, but the authorities over-ruled them and ever since 1902, I have been paying the increased assessment.

Enclosures - Two Only pzjanle

2. In the Increment Register of the Mangalore Taluk Office, the Settlement assessment Rs. 101/- has been shown correctly, but pre-settlement assessment has been shown as Rs. 30/- and odd instead of Rs. 12/- and odd. That the pre-settlement assess-

ment of the warg was Rs. 12/- and odd, has been proved by the following records produced by me, at the time of enquiry into my petition dated 26-10-38, to the Collector in this matter viz., (1) Potail's assessment receipts granted before the settlement, (2) Registered sale deed of the property, (3) Registered mulgeni leases executed by tenants for the lands in this property, and above all by (4) Certified extract from the Barthi and Kambarthi warg Account of the Village, granted by the Tahsildar as far back as 1928. Exhibit B gives details of original records produced by me at the time of enquiry on 10- 11- 1938. All the above records relating to periods before the Settlement of 1902, clearly go to show that the pre-settlement assessment of Muli No. 18- 1 was Rs. 12/- and odd. Yet the Collector ignored the main issue in spite of authentic proof, and stated, that 'it is not possible to revise the orders passed at settlement at this distance of time I submit, that I did not want a revision of orders, but a correction of a mistake in an important Register maintained by the Revenue Department, especially, when that mistake haw been proved by another Government record viz., certified copy of extract of village accounts (Bharthi Kambharthi Warg Account) granted by the Revenue Department as far back as 1928 i.e. before the Settlement period and also other original records specified in Exhibit B. I further submit, that so far as it would appear, (~~that~~) no time limit exists for the correction of proved mistakes in Government records. The Taluk Increment Register is not accessible to the Public, who are, therefore, not in

a position to know the existence of mistakes made therein by Revenue officials, and it is only, when certified copies of the entries are applied for (and) granted to the land-holders, it is possible to discover the mistakes, if any. Moreover, a correction of a mistake of this kind involves no loss of revenue to Government, but only rectification of a clerical error.

3. In the certified copy of village accounts for the year 1928, granted to us it is found out, that besides Muli 18- 1 with a pre-settlement assessment of Rs. 12/- and odd, there are two other properties viz. Muli Nos. 18- 2 and 18- 3 belonging to others, (1) Anusuya Bai, (2) Basel Mission Agent, showing a pre-settlement assessment of Rs. 18- 13- 4 and Re. 0- 10- 6 respectively with a total of Rs. 31- 14- 1 for all the three properties, which leads to the conclusion, that the total assessment of all the three properties, has been shown against Muli No. 18- 1, only, in the Increment Register and proportionately distributed among the pattas of Muli No. 18- 1, instead of all the pattas of the three properties. Hence the mistake.

4. In this connection, I beg to submit that the management of this property in Muli No. 18- 1, devolved upon me by right of succession, after my recent retirement from Government Service in various places outside the District, and they are all lands held by tenants on Mulgeni lease (Perpetual lease) dating from a long time past, and, therefore, the

rents fixed then were very low as the assessment then was only Rs. 12/- and odd and under the mulgeni tenure prevailing in this District, rents are perpetual and unalterable. But, when in the Settlement of 1902, the Government raised the assessment from Rs. 12/- to Rs. 101/-, the mulgar was put to heavy losses, as rents could not be proportionately raised and in many cases the assessment on a patta was more than the mulgeni rent already fixed. It was with a view to afford a much needed relief to the mulgars, Government passed the mulgeni rent enhancement Act, Act XIII of 1920, under which a mulgar can recover from the mulgenidar, the enhanced portion of the assessment, while the mulgar is responsible only for the pre-settlement assessment. This difference between the pre-settlement and settlement assessment is now shifted to the mulgenidar, by the Revenue Divisional Officer, on application by the parties, under Section 5 of the above Act, and in several applications made by me under this Section, the Revenue Divisional Officer based his decisions on the assumption that the pre-settlement assessment of the warg was Rs. 30/- and odd, as shown in the Taluk Increment Register and not Rs. 12/- and odd, which is the correct figure and hence year by year, I am undergoing heavy losses by this wrong adjustment. Hence the Collector was moved to correct the mistake in the Increment Register.

The orders passed by the Collector in this case in spite of authentic documentary proof, and certified extract from his own records, are not based

on justice and fairness and I therefore, beg to solicit, that the Board may be pleased to order the Collector to rectify the mistake in the Taluk Increment Register as per extract of the village Bharthi and Kambarthi Account of the Taluk previous to settlement, which gives the correct assessment, and thus secure for me a just and equitable adjustment in the payment of assessments, while it involves no loss of revenue to Government on any account.

The enclosures may be returned when done with.

For which act of justice and equity, shall be grateful.

I beg to remain,

S i r s,

Your most obedient servant,

Kadri Road,
Mangalore,
d/- 31- 3- 1939

Sd/- L. Bhavani Shanker Rao.

/True Copy/-

L. Bhavani Shanker Rao

18-10-1940

Memorialist.

39

Rev Re

2/ 18/11

DR
Evelyn Fernandes
12/11

Assessment - L South Kan
Mangalore TK - Kadiatbail V.
Murli No 18/1 - Mistake ...
the settlement increment
remission account - Rectifica

13/11

From Sri L. Bhanani
Shanker Rao, Dr. Retired Dep
Dy Collr of Customs, residing at
Kadri Mangalore town. S.
Kanara Dt Dr: 26.9.40 + 20.x.4

Mul-19 CF

Endt No 2284 E/40-1 Dr., 12/

para 3 of Shri Fernandes
note 7 of Mr Smith Secretary
Mini Secy may mark
for Rev Secy MK 110

A copy of the petn quoted above
Rev Secy to the Bd
of Rev. for submission of the
connected records together
with any remarks which the
Bd may wish to offer on
such of the Petrs contentions
as have not been fully
dealt with in the records.
The Bd is also requested
to state what it had in
mind when it referred
the Petrs to Section 4 of
the Mulgavi Rent Enhancemt

p 29 CF

Sl orders on
p 5 nf

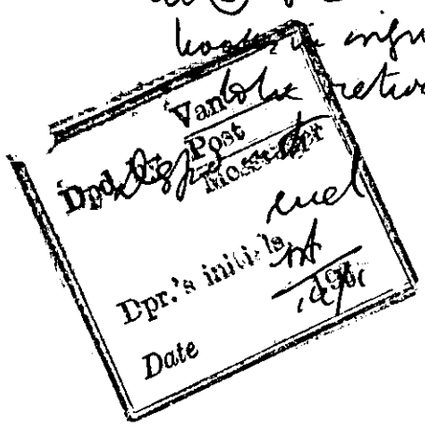
with reference to the appeal
petn presented to it by
the memorialists p 1260 nf
31.12.39

Ref. 1920. — Vide Proceedings of the Board of Rev
Rl. Nr. 2562 dt. 25.5.40 p 39 cf.

To

The Bd of Rev.

with cf & Enclosures
as (S) for receipt
book & original
returned.



11/11

12.11.40

C.F. 31—12,006—28-11-39

Revenue DEPARTMENT.

CURRENT No. 2610 E

Received 19 *Registered* 28.11.40 19

Encl

Subject.

Assessment -(South Kanara)- Mangalore Taluk - Kodialbail village - Muli No.18/1 - Mistake in the Settlement increment remission account - Rectification.

Ref.F No.6733/40-1

Station Madras, *Dated the* 25th November 1940.

From

S.Venkateswaran Esquire, I.C.S.,
Secretary,
Board of Revenue.

G.W.Priestley Esquire, I.C.S., Commissioner of Land Revenue and Irrigation.

Read the following:

I

Endorsement from Government, Revenue Department, No.2284-E/40-1 dated 12th November 1940.

II

B.P.Rout.No.3909 dated 25-8-39.

III

B.P.Rout.No.2562 dated 25--5--40.

Reference:

Submitted to the Government.

2. Reference is solicited to the Collector's letter Ref.A-5

A-5-6095/39 dated 6--4--40 at pp.11 to 15 c.f. of B.P. Rout.2562 dated 25-5-40. In view of the facts mentioned by the Collector in his letter dated 6-4-40,the Board agreed with him that it was not possible to fix the pre-settlement assessment on the petitioner's holding.

3. It was thought that the petitioner could file a petition under section 9 of the Mulgeni Rent Enhancement Act,1920, and plead and prove that there was a clerical mistake in regard to the pre-settlement assessment and - that the rent should be fixed with reference to the correct pre-settlement assessment as established by the evidence. It can be argued reasonably:-

(1) that, as an appeal lies to the District Court under section 11,the Revenue Divisional Officer who is the trial court under the Act can act as under section 151 of the Civil Procedure Code, and

(2) that it could not have been the intention of the proviso to section 8 of the Mulgeni Rent Enhancement Act, that even a proved clerical error in the Settlement -- Officer's apportionment should be binding on the Collector and the parties. In this view, it might be held that it is open to the Collector and the District Court under the Act to rectify the mistake and fix the revised rent with reference to the correct presettlement assessment. The Board submits that this was what it had in mind.

for Secretary. 25.5.40

To The Secretary to Government, Revenue Department, with the memorial and enclosures as per list.

S.G/25-11

Paper list.

1. B.P.Rout.3909 dated 25-8-39
2. 2562 5-40
3. One stitch of enclosures submitted by the petitioner.

Rev Dept

Assessment - (South Kanara)
Mangalore taluk - Kadiatbial Vge - Mudi
Nr 18/1 Mistake in the settlement increase
remission account - Rectification

Wh 1-17 & 19 cf
[Cir 22824 E 40]

From Sri L. Bhavani Shankar Rao
Pr. 26.9.40 & 20.x.1940

To W.S.

Please see the ptn from Sri L. Bhavani Shankar Rao at Pp 1-17 cf. The ptn which was first submitted on 4.10.40 was returned to the ptnr on 7.10.40 as he failed to enclose copies of the ptn addressed to the Collr & the Bd of Rev. & of the orders passed by them. The ptn has now been resubmitted with the required enclosures.

p. cf
Cir. 2445 E 40
7 x 40
(L)
see Wh 19-39 cf

2. The ptnr says that the assessment prior to the settlement of 1902 on his Mudi Wang Nr 18-1 was Rs 12 & odd, that p5 cf it was enhanced to Rs 101 & odd at the p7 cf time of settlement of 1902, that in the increment register prepared then "re presettlement assessment was wrongly shown as Rs 30 & odd & that consequently p7 cf he is not able to recover the full enhanced assessment from his 'mulgenidars' to [illegible] 9 cf whom the lands have been leased unde

the mulgeni tenure The pltrs now wants that the settlement increment regr of 1902 should be corrected so as to show the presettlement assessment as Rs 12 thodd instead of Rs 30 thodd. According to the entry referred to the pltrs can recover under the Mulgeni Rent Enhancement Act after 20 the enhancement over Rs 30 thodd as the presettlement assessment ~~was~~ is stated to have been shown in the increment regr as Rs 30 thodd. He apparently wants that he should be able to recover all the amount covered by the enhancement over Rs 12 thodd which is said to be the correct pre-settlement assessment

p17 cf

Sec 7 p 259 applied under Vol I [illegible]

p 7 cf

p 5 cf

3. The Coth dismissed his pltn on the ground that it was not possible to revise the order passed at Settlement (1902) ~~during the lapse of time~~. The Bd rejected the appeal on the ground that there was no reason to think that there was any error in the increment remission account. The Bd also stated that the pltn might if he was so advised establish

p27cf

p39cf

Sec 9 does not help him & that he is questioning the apportionment of old assessment made under sec 8. Sec 8 lays down that the old assessment on a ~~the previous~~ holding should be determined when the old assessment is not known. The records cited by the Pltff in his present Pltn have also been cited in his appeal to the Bd & it is presumed that the Bd would have taken them into consideration before passing the order at p 39 CF.

4 The Pltff states that he became aware of the incorrect entry in the increment remission roll when extracts thereof became available for purposes of the Malegaon Rent Enhancement Act of 1920. The Pltff however moved Collr only in October 1939.

For orders whether it will be considered that the Pltn is far out of time & whether the Court will agree with the Collr that it is not possible to revise the order passed at the settlement of 1902 at this distance of time. If the Pltn is to be considered on merits a report may be called for from the Bd of Rev with all the connected records.

28/X
28/10/74

The effect of the Mulgeni Rent Enhancement Act is to enable the landlord (mulgar) to recover from the tenant (mulgenidar) the increase in the assessment. The memorialist correctly points out that the determination of the amount of the old assessment is in his case governed by the proviso to section 8 of the Act, which makes the entry in the Increment Remission Register, viz., Rs.30/-, conclusive proof of the old assessment. Thus the memorialist can only recover Rs.101/- - Rs.30/- or Rs.71/- from his tenants under the Act. His claim is that the entry in the Increment Remission Register should be corrected to Rs.12/- so as to enable him to recover Rs.101/- - Rs.12/- or Rs.89/- and thereby avoid a "serious loss" of Rs.18/- per year. The memorialist is correct in his contention that section 9 of the Act, to which the Board referred him, does not apply to his case. The appeal provisions of section 11 will presumably not avail him as apart from the question of limitation, the District Court will likewise be bound to decide the case on the proviso to section 8, and presumably the memorialist cannot produce any ~~either~~ record of apportionment by the Settlement officer other than the Increment Remission Register to contradict it. His object can only be achieved, apparently, by the means for which he prays.

It is submitted, however, that it is not desirable on general grounds to grant this request. The Act laid down in effect that certain revenue records should be conclusive proof of certain facts. It appears to be true that neither the memorialist nor his predecessors in title had any opportunity disputing the correctness of this record. The morialist's predecessor in title was, however,

p12 58 of Mad code vi. ibid Bk
p1259 ibid
p15 cf

p1260 col 1 & × not exactly this. Any p13 cf apportionment made by the Sett. Officer is enclosed. The Increment Remission Register is only one Register prepared by the S.S.O. There p17 cf might be other registers showing the old pre-settlement demand in the p7 cf/p23 cf Mulki etc. would be checked to equal what p1260 col 1 & 2

presumably given a rough patta at the time of settle ment stating the old and new assessment of his hold- ing. He does not appear to have objected to the figure shown for the old assessment, but only to the increased assessment. He thus appears to have had an indirect opportunity of questioning the correctne of the entry which subsequently became of importance under the Act. Moreover, it would appear to be contrary to the intentions of the Act to permit conclusive evidence to be amended in the manner contemplated by the memorialist.

In view of the considerations in para.2 and the comparatively trivial amount involved, the memorial may be rejected.

9/11

I think we might get the Board's remarks & also ascertain from it what it had in mind in regard to para. 11 Sect. 57 the Act.

11/11

Yours.

A draft encl. to the Bd's letter is submitted for approval.

11/11

12.11.40

Issued as Endt N° 2284 E40-1 dt. 12-11-1940 — pp 41-42 cf

From the Bd of Rev. Ref for N° 6733-40-1 dt. 25-11-40 — pp 43-44 cf

Tours.

Please see

(1) the notes from p1 ante,

(2) the Endt to the Bd at pp 41-42 cf, and

(3) the Bd's Refce at pp 43-44 C

2. Attention is also solicited to the Collr's letter at pp 11-15 cf & Bd's Rt 2562 dt. 25.5.40 & the Bd's Secy's notes & the order in circulation at pp 3-5 NF of the Bd's (A) & of Bd members

In para 3 of the Bd's Refce at p44 cf. the Board has explained what it had in mind when it referred the file to see q of the Malgeni Rent Enhancement Act. — p1260 of Mad Code Vol I Bk 8

NF
p 4 of BP(A)

on the ground that there was a clerical error in the increment remission account with repn to which the old assessment was apportioned. Attention is solicited to the wording of sec 9 of the Multani Rent Enhancement Act. It appears that the qn of revising the rent can be taken up only when the assessment is varied. For orders therefore whether it will be considered that the qn can be taken up now

b 1260 of Manual code
VII 1-8-8

3/. According to the Board's order on appeal, it is for the party to prove that there was a clerical error. It is however seen from the Collr's letter at pp 11-13 of BP 25-62 & 25-5 that it would be difficult to prove what the old assessment was.

p 19 of CF of BP (A)

(A)

this can

4/. The Board has not offered any remarks on any other point. Pl see Secy's note at p 5 supra and the memo at pp 41-42 CF. For orders.

12.40

1260 of Manual code 2
VII 1-8-8

) It is submitted that sec 9 of the Multani Rent Enhancement Act, 1920, can only be applied when the assessment is varied. From its terms it appears to apply only to the

text of the variation so that would not help the petitioner to achieve his end, even if applied to the new settlement.

2) The rent was enhanced under the provision of s 5 of the Act, taken advantage of by the appellant's predecessor in title. The time for appeal under s 11 is over. The matter cannot be re-agitated now in a court of law, owing to the doctrine of res judicata.

3) It is submitted that even if the petitioner's prayer to alter the Increment Remission Register were granted it would not help him in view of what is stated in paras 1 & 2 above. The petitioner must it is submitted be left to suffer the laches of his predecessor-in-title, like anyone else.

A.G.
16/12
15

This is an unusual case. The Mulgeni Rent Enhancement Act of 1920, was passed to enable the owners of lands rented on 'mulgeni tenure' to recover from their tenants the enhancement of revenue which was ordered at the original settlement of South Kanara. It is not specifically stated in the papers whether the petitioner's predecessor-in-title

has applied for an enhancement of his rent under section 7 of the Act but presumably he must have done so and the petitioner refers vaguely to past proceedings. If he had so applied the Collector has presumably enhanced the rent under sections 6 and 7. The petitioner's complaint apparently is that the enhancement has been based upon the figures found in the increment remission statement. He contends that in that statement the pre-settlement revenue of his land is shown as Rs.30 odd instead of as Rs.12 odd which was the revenue actually levied on it. Apparently he desires that the order passed under sections 6 and 7 of the Act should be modified so as to enhance the rent by the difference between Rs.12 and Rs.101 instead of as at present by the difference between Rs.30 and Rs.101.

Section 11 of the Act makes provision for an appeal from any order under the Act to the District Court, but presumably the appeal time has expired. If however it is still open to the petitioner to file an appeal he may be advised to do so. The proviso in section 8 would not, I think, prevent the Collector from disregarding an apportionment made by a Settlement Officer if it could be proved that the apportionment as recorded was an error.

The Board of Revenue referred the petitioner to section 9 of the Act. This section is intended to deal with the situation

which would arise after resettlement and authorises the Collector when the assessment is "varied" to modify the rent as may seem equitable having regard to the nature and extent of the variation in assessment. The Board seems to think that it may be open to the Collector on receipt of an application under section 9 to correct any error there might have been in the figure for the pre-settlement assessment adopted in the earlier proceedings under sections 6 and 7. It is doubtful if that view is correct since section 9 authorises the Collector to modify the rent only with regard to the nature and extent of the variation and in view of the use of word "varied" in the earlier part of the section it is clear that the variation in question is restricted to a variation of assessment subsequent to the first settlement. It is possible therefore that the petitioner has no remedy under the law even if an error has been committed. At this distance of time, however, it is not possible to establish satisfactorily whether there has been an error or not. In any case it is not open to Government to interfere by executive order with orders which have presumably been passed under the provisions of sections 6 and 7 of the Act. The petitioner may be advised to file an appeal under section 11 if such an appeal is still open and may be informed that if the appeal time has expired nothing can be done in his behalf.

Legal.

Revenue 2284 E40-2
7-12-40

The Board's view that relief may be obtained by the petitioner in this case under section 9 of the Mulgeni Rent Enhancement Act (Madras Act XIII of 19 is not correct. The enhancement or reduction which may be directed under section 9 should have regard the nature and extent of the variation in assessmen It is only therefore in so far as the assessment ha been varied at a subsequent settlement that relief can be given under section 9. Where however as in this case it is claimed that the assessment at the original settlement was invalid, section 9 will not apply to the case.

2. Section 11 of the Act which gives a rig of appeal from every decision by a Collector or oth officer or person empowered under section 4 to the District Court does not specify the time within the appeal should be preferred. The omission to prescribe a time limit is a casus omissus and it not open to us to supply the omission by importing a limitation that the appeal should be filed within a reasonable time. Where an Act authorised the apportionment of the cost of making a sewer without limiting any time for the purpose, the Court refuse to regard the Act as limiting the exercise of the power to a reasonable time - please see Law Report 3 Queen's Bench Division 384 - Bradley v. Greenwich Board of Works. In that case, Cockburn C.J. said:

"Now turning to section 53, we seek in vain for any limitation of the time within which the apportionment is to be completed. And as the Legis lature have fixed no time, it is impossible for us to fix one.....at all events, we cannot amen the Act by inserting in it a provision which we do find there."

The principle of this decision applies

present case. It cannot therefore be said that there is any specific period of time within which the appeal to the District Court should be file

3. Even if the petitioner's request is granted and the Increment Register is amended as suggested by him, the petitioner cannot obtain any relief unless the statutory orders passed under sections 6 and 7 of the Act are varied. As pointed out by the Revenue Secretary, it is not open to the Government to interfere with statutory orders passed under sections 6 and 7 of the Act. The orders can only be varied by an appeal preferred under section 11

4. It is not perhaps necessary to advise the petitioner to file an appeal under section 11 as suggested by the Revenue Secretary at 'A' on page 10 ante. The Government may simply decline to interfere in this case.

K. M
17/12/64

17/12/64.

p.1259 ante

p.1259 ante

17/12/64

p.1260

Paper book is not directed to advise the petitioner whether any practice convenient or not will amount to giving him legal advice. He may be left to take such advice as his legal advisers may indicate. But any consequences which petitioner will suffer under s. 11. A hint to that effect may be given without specifically advising the petitioner

17/12/64

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ..		
When examined..		
When signed ..		
When despatched.		

SUBJECT :—

Enclosures returned herewith

23/12

READ AGAIN _____, dated _____ 19_____

" " _____ " _____ 19_____

READ *ALSO* :—

C No. 2284 E/40 From Sri L. Bhavani Shankar Rao, dated 26.9.40 & 20.x.40.

" _____ TB the Bd of Rev. Endt. 2284 E/40-1 12-11-1940

" _____ from — " — Rlf. 6733-40-1 " 25-11-1940.

Order Ms. No. 3177, dated 23/12 19_____

~~Resolution~~ Rout.

p 12 nf

The petnr is informed that on the evidence produced the Govt are not prepared to order the alteration of the entry in the Inam register regr. The Govt however observe that even if it were amended, it would not have the effect of altering statutory orders under section 6 & 7 of the Madras Rent Enhancement Act & that such order could be varied only as the result of an appeal under sec 11 of the Act.

Dpd. by Van — 1A

with pr

23/12

p 1259 nf

22/1

To

Sri L. Bhavani Shankar Rao, Rly

Asst Collr of Customs (Prevn) residing at Kadri, Mangalore Town, S. Kanara Dt. with

Enclos returned herewith p 30 CF

The Bd of Rev. with 2 Bfs.

Encls (A) & (C)

20.12.40